

The Legal Case for Psychological Health & Safety

Why Psychological Safety?

A psychologically healthy and safe workplace is one that promotes employees' psychological well-being and actively works to prevent harm to employee psychological health due to negligent, reckless or intentional acts.

The provision and maintenance of a psychologically safe workplace has been recognized as a legal duty, similar to the duty to provide a physically safe workplace. In both realms, the employer must take every reasonable precaution to protect employee safety and show that they have done so.

Employer Responsibilities: The Context

Some of the mental distress observed in the workplace is brought into the place of employment by employees, while some is created or at least aggravated in the course of the work experience.

The concept of mental distress must be distinguished from the concept of mental illness. For example, a person may experience harassment and suffer mental distress as a consequence, but may not be diagnosable as mentally ill. Mental distress, as reported by employees, includes sub-clinical depression and anxiety as well as severe demoralization, disengagement and alienation. Another concept is that of mental injury. The defining aspect of mental injury is that some person or persons are responsible for it in whole or in part. Mental injury involves harm to a person that results from someone else's negligent, reckless or intentional conduct. When such conduct occurs in the workplace, the employer may face some liability for it, either directly or by association.

Employers have different kinds of responsibilities with regard to mental distress, mental injury and mental illness. Some of these responsibilities are moral, some are legal and some are less clear. Complicated, isn't it?

A New Standard of Conduct

Ensuring psychological safety calls for a new standard of conduct at work. This standard requires that people treat one another with fairness, civility and respect regardless of their power or status within the organization.

Examples of conduct that contravene this standard and may result in mental injury are: bullying; harassment; discrimination; and the imposition of unreasonable work demands coupled with refusing employees minimal levels of control over workload and work pace.

The range of conduct punishable by law has expanded considerably in recent years. It is now difficult for employers to foresee where liability issues may appear next. It is important to recognize that there is a continuum of unacceptable workplace behaviours and expectations that range from rudeness, through to harassment and, on the extreme, violence. The overall effect of the new legal standards is that types of conduct that would most likely have been tolerated in the workplace even five years ago are no longer acceptable to the majority of judges and arbitrators. Given this, it is in employers' best interest to act in a manner that prevents the risk of legal consequences.

GM@W is designed to help employers address new legal requirements to maintain a psychologically safe workplace by guiding employers through the process of developing comprehensive policies and programs.